

DEPARTMENT OF SOCIAL SERVICES

744 P Street, M.S. 19-31
Sacramento, CA 95814
May 14, 1986



ALL COUNTY LETTER NO. 86-39

TO: All County Welfare Directors
All Public and Private Adoption Agencies
All SDSS Adoption District Offices

SUBJECT: PUBLIC ASSISTANCE FOR FOREIGN-BORN CHILDREN IN THE
INTERCOUNTRY ADOPTIONS PROGRAM

The purpose of this letter is to explain federal and State requirements affecting the eligibility for Aid to Families with Dependent Children-Family Group/Unemployed (AFDC-FG/U) and Aid to Families with Dependent Children-Foster Care (AFDC-FC) benefits for foreign-born children who have been brought to California under the Intercountry Adoptions Program. This letter pertains only to that period of time prior to the issuance of a final decree of adoption by a California court. This letter does not apply to foreign-born children who have been adopted in their native country (Adoption Abroad) as defined at Manual of Policies and Procedures Section 70-800(a).

Briefly, foreign-born children who have been brought to California under the Intercountry Adoptions Program are not eligible for federal financial assistance. As far as State eligibility, prior to the issuance of a final decree of adoption by a California court, foreign-born children who have been brought to California under the Intercountry Adoptions Program are not eligible for State financial assistance unless the child becomes a dependent of the court under Welfare and Institutions (W&I) Code Section 16143(c) due to failure of the prospective adoptive parents and the agency to meet their responsibilities for care, custody, control and financial responsibility for the child.

The following information provides elaboration.

Federal Requirements

The Department has been informed by the Immigration and Naturalization Service (INS) that a foreign-born child who is in the United States for the purpose of adoption is a sponsored alien and as such the child is not eligible for any public assistance. (The sponsors are the prospective adoptive parents who petition for a visa (I-600) for the foreign-born child.) When the foreign-born child arrives in the United States, he/she

is not a United States citizen and is in California on a special INS visa that the prospective adoptive parents have obtained specifically for the purpose of adopting that foreign-born child.

It is a federal requirement that a foreign-born child receive the special visa for the purpose of adoption only if a financially responsible person states that the child will not become a public charge. See United States Code, Title 8, Aliens and Nationality, Section 1155(b):

"...unless the petitioner establishes to the satisfaction of the Attorney General that the petitioner and spouse will care for such child properly if he is admitted to the United States."

See also Section 1182--Excludable Aliens:

"(a)(15) Aliens who in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission, are likely at any time to become public charges."

It is also a federal requirement that as part of the home study the petitioner submit documentation that indicates the financial capability of the prospective adoptive parent or parents to rear and educate the child. If the prospective adoptive parents who sponsored the child for purposes of adoption in the United States decide not to complete the adoption, the foreign-born child would be considered an undocumented alien by INS and would be subject to deportation.

State Requirements


In an intercountry adoption, California statute requires that the private adoption agency assume all responsibility for the foreign-born child including care, custody and control from the time the foreign-born child leaves his/her native country as if the foreign-born child had been relinquished to the private adoption agency (W&I Code Section 16143(a)). If the prospective adoptive parents no longer desire to adopt the foreign-born children they have sponsored and cease the adoption process prior to the issuance of a final decree of adoption, the private adoption agency continues to be financially responsible for the foreign-born child. Statute does permit the agency to enter into an agreement with the prospective adoptive parents to share or transfer financial responsibility for the foreign-born child (W&I Code Section 16143.1). If the foreign-born child's native country has given full guardianship to the prospective adoptive parents, the parents assume all responsibility for the foreign-born child including care, custody, control and financial support (W&I Code Section 16143(b)).

To qualify for AFDC-FC the child must meet the general eligibility requirements found in Eligibility and Assistance Standards (EAS) Section 45-200 which includes the proper authority for placement. While relinquishment for adoption is an accepted authority for placement, the foreign-born child is not relinquished to the private adoption agency in California. Therefore, the foreign-born child is not eligible for AFDC-FC.

The determination of alien status under both AFDC-FG/U and AFDC-FC is made in accordance with EAS Section 42-430. To make this determination documentation on the foreign-born child's legal entry into the United States would have to be provided. That documentation would include the foreign-born child's visa which was issued by the United States with the understanding that the child would not become a public charge.

The only instance in which the foreign-born child can be eligible for State AFDC benefits prior to the issuance of a final decree of adoption is when both the prospective adoptive parents and the agency fail to meet their responsibility for the care, custody, control and financial responsibility for the foreign-born child and the foreign-born child becomes a dependent of the court (W&I Code Section 16143(c)). However, this action would not absolve the private adoption agency from its financial obligation to the foreign-born child as required by W&I Code Section 16143(a).

Agencies should direct any questions regarding adoptions to the Adoptions Field Support Bureau at (916) 322-5973 (ATSS 492-5973). Questions regarding AFDC-FG/U should be directed to (916) 322-5387 (ATSS 492-5387). Questions regarding AFDC-FC should be directed to (916) 445-0813 (ATSS 485-0813).



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cc: CWDA